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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PENDLETON DIVISION

WILDEARTH GUARDIANS, OREGON
WILD, THE SIERRA CLUB, AND GREAT
OLD BROADS FOR WILDERNESS,

Plaintiffs,

vs.

SHANE JEFFRIES, in his official capacity as
Ochoco National Forest Supervisor; and
UNITED STATES FOREST SERVICE,

Defendants, and

OCHOCO TRAIL RIDERS, et al.,

Defendants-Intervenors.

Case No. 2:17-cv-1004-SU (lead)

(Consolidated with trailing Case Nos.
2:17-cv-1091-SU and 2:17-cv-1366-SU)

PLAINTIFFS' MOTION TO EXTEND
THE DEADLINE FOR MOTIONS
FOR ATTORNEYS' FEES, COSTS,
AND OTHER EXPENSES AND BILLS
OF COSTS

Plaintiffs in Case Nos. 2:17-cv-1004-SU (lead – WildEarth Guardians, et al.) and 2:17-cv-1091-SU (Central Oregon Land Watch) respectfully move this Court to extend the deadline for Plaintiffs’ motions for attorney fees and costs and bills of costs. Specifically, Plaintiffs request the Court order that the deadline for filing motions and briefing on attorneys’ fees, costs, and other expenses as provided by Federal Rule of Civil Procedure 54(d)(B)(i) and the deadline for Plaintiffs to file their bills of costs under LR 54-1(a)(1) be extended to coincide with the timing requirements established by the Equal Access to Justice Act (“EAJA”), 28 U.S.C. 2412(d)(1)(B). Plaintiff in Case No. 2:17-cv-1366-SU (Oregon Hunters Association) joins this motion as it relates to extending the deadline for its bill of costs and stipulates to the deadline extension request by the other Plaintiffs for their respective fee petitions under the Endangered Species Act (“ESA”). In compliance with Local Rule 7-1(a), Plaintiffs’ counsel certifies that it conferred with counsel for Defendant-Intervenors regarding this motion and they do not oppose this motion. Plaintiffs’ counsel attempted to confer with counsel for Federal Defendants via phone and email, but did not obtain a response beyond an autoresponder email indicating that counsel for Federal Defendants would not be responding to emails or voicemails during the current federal government shutdown.

Unless otherwise ordered by the Court, Fed. R. Civ. P. 54(d)(2)(B) require that a motion for attorneys’ fees and costs be filed within 14 days of entry of judgment by the District Court. LR 54-1 also requires that a Bill of Costs be filed no later than 14 days after entry of judgment. EAJA, however, requires a party to file an application for attorneys’ fees

and costs within thirty days after a judgment becomes final and not appealable. 28 U.S.C. § 2412(d)(1)(B), 2412(d)(2)(G).

Here, Plaintiffs WildEarth Guardians, et al. (Case No. 2:17-cv-1004-SU) and Central Oregon Land Watch (Case No. 2:17-cv-1091-SU) intend to seek attorneys' fees, costs, and other expenses under both EAJA and the Endangered Species Act ("ESA"), 16 U.S.C. § 1540(g)(4). The ESA does not include a deadline for the filing of a motion for attorneys' fees, costs, and other expenses, and therefore such a motion must comply with the Federal Rules of Civil Procedure and any governing local rules. *See* 16 U.S.C. § 1540(g)(4); Fed. R. Civ. P. 54(d)(2)(B) ("Unless a statute or a court order provides otherwise, the motion [for attorney's fees] must: (1) be filed no later than 14 days after entry of judgment[.]").

Judgment was entered in the three consolidated cases on January 4, 2019, Doc. No. 105, but will not be considered final and not appealable under EAJA until after March 5, 2019. Plaintiffs' motions for attorneys' fees, costs, and other expenses under EAJA are therefore due by April 4, 2019. Plaintiffs' motions for attorneys' fees, costs, and other expenses under the ESA and bill of costs are currently due on January 18, 2019.

It would be in the interests of judicial efficiency and the limited resources of the parties to consolidate and extend briefing on motions for attorneys' fees, costs, and other expenses under EAJA and the ESA. Such consolidation and time extension would allow the parties time to attempt to settle the matter of attorneys' fees, costs, and other expenses, thereby potentially avoiding the need to have the Court resolve such a dispute. If such settlement efforts are unsuccessful, such consolidation and time extension would prevent duplicative briefing from being submitted to the Court and would allow the Court to resolve

the matter of attorneys' fees, costs, and other expenses under both EAJA and the ESA at the same time after considering one set of briefing in each of the consolidated cases.

Accordingly, for the foregoing reasons, Plaintiffs respectfully request that this Court issue an order extending the deadline to file any motions for attorneys' fees, costs, and other expenses and any bills of costs to be filed on or before April 4, 2019, or within thirty days of the final disposition of any appeal.

Respectfully submitted this 10th day of January, 2019.

/s/ John R. Mellgren

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